

DEPARTMENT OF FOOD AND AGRICULTURE

A.G. KAWAMURA, Secretary

Division of Measurement Standards
6790 Florin Perkins Road, Suite 100
Sacramento, CA 95828-1812
Phone: (916) 229-3000
Fax: (916) 229-3026



DMS NOTICE
P – 05 – 1

February 24, 2005

Discard: Retain

TO WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Off Sale Guidelines for Petroleum and Automotive Products

The United States Constitution and the California State Constitution both guarantee all people the right to "due process" in the questions of life, liberty, or property. It is only under the most unusual circumstances that a person can even be temporarily deprived of their property without opportunity for a prior hearing. Unusual circumstances are generally recognized as health and safety issues. The potential injury to the public must outweigh the potential injury to the purveyor from a temporary interference with its business.

The California Appellate Court, in *People v. Leo Wayne Travers*, (1975) 53 Cal. App. 3d, stated:

"The automobile is a recognized necessity in our society and the function of its engine, transmission, and brakes are a matter of vital importance to the motorist. It is in the interest of public safety to prevent the malfunction and break down of motor vehicles traveling on our crowded streets and highways."

Keeping the due process requirements in mind, the following guidelines are suggested for use regarding non-conforming petroleum and automotive products.

Upon receiving notification that a product failed to meet specifications, remove the product from sale based on the test results of the initial sample. If additional product has been added, the product should remain off-sale until further sampling and testing shows a conforming product.

Questions regarding this notice should be directed to David Lazier, Chief, Weighmaster Enforcement/Petroleum Products Branch at (916) 229-3044.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mike Cleary'.

Mike Cleary
Director

cc: Ed Williams, Director, County Liaison Office